



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2009-0140; FRL-9820-8]**

#### **Approval and Promulgation of Implementation Plans;**

#### **North Carolina; Removal of Stage II Gasoline Vapor Recovery Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve changes to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality on September 18, 2009, for the purpose of removing Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State. The September 18, 2009, SIP revision also addresses several non-Stage II related rule changes. However, action on the other portions for the September 18, 2009, SIP revision is being addressed in a separate rulemaking action. EPA has preliminarily determined that North Carolina's September 18, 2009, SIP revision regarding the Stage II vapor control requirements is approvable because it is consistent with the Clean Air Act (CAA or Act).

**DATES:** Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2009-

0140, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
  2. *E-mail*: [R4-RDS@epa.gov](mailto:R4-RDS@epa.gov).
  3. *Fax*: (404) 562-9019.
  4. *Mail*: “EPA-R04-OAR-2009-0140”-Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
  5. *Hand Delivery or Courier*: Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
- Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2009-0140. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

[www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Quality Modeling and

Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9222. Ms. Sheckler can be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

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### **I. Background**

EPA, under the CAA Amendments of 1990, designated (pursuant to section 107(d)(1)) and classified certain counties in North Carolina, either in their entirety or portions thereof, as “moderate” ozone nonattainment areas for the 1-hour ozone national ambient air quality standards (NAAQS). Specifically, the Charlotte-Gastonia Area (comprised of Gaston and Mecklenburg Counties); Greensboro-Winston-Salem-High Point Area (comprised of Davidson, Davis (partial), Forsyth and Guilford Counties); and Raleigh-Durham Area (comprised of Durham, Granville (partial), and Wake Counties) were all designated as “moderate” ozone nonattainment areas for the 1-hour ozone NAAQS. The designations were based on the Areas’ 1-hour ozone design values for the 1987-1989 three-year period. The “moderate” classification triggered various statutory requirements for these Areas including included the Stage II vapor

recovery requirements pursuant to section 182(b)(3) of the CAA.

Prior to the deadline for implementing the requirement of section 182(b)(3) of the CAA, the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point and the Raleigh-Durham Areas in North Carolina attained the 1-hour ozone NAAQS. North Carolina had implemented all measures required at the time for moderate ozone nonattainment areas under the CAA, and with three years of data (1990-1992), demonstrated compliance with the 1-hour ozone NAAQS.

Subsequently, NC DENR submitted to EPA a 1-hour ozone maintenance plan and request for redesignation for the three moderate nonattainment areas. As part of the associated maintenance plans, North Carolina provided contingency measures that included regulation 15A North Carolina Administrative Code (NCAC) 02D.0953 (hereafter referred to as rule .0953), entitled *Vapor Return Piping for Stage II Vapor Recovery*, for all new or improved gasoline tanks. In addition, rule 15A-02D.0954, entitled *Stage II Vapor Recovery* (hereafter referred to as rule .0954), as part of the contingency measures that were also included in the 1-hour ozone maintenance plans. These contingency measures were never activated as the Areas continued to attain the 1-hour ozone NAAQS. EPA approved the redesignation requests and the maintenance plans for the Charlotte-Gastonia Area on July 5, 1995 (60 FR 34859), Greensboro-Winston-Salem-High Point Area on September 9, 1993 (58 FR 47391), and the Raleigh-Durham Area on April 18, 1994 (59 FR 18300).

## **II. Analysis of the State's Submittal**

EPA's primary consideration for determining the approvability of North Carolina's request to remove Stage II vapor control requirements from the contingency measures in its SIP

for the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas is whether these requested actions comply with section 110(l) of the CAA. Below is EPA's analysis of these considerations.

**a. Federal Requirements for Stage II**

States were required to adopt Stage II rules for all areas classified as "moderate" or worse under section 182(b)(3) of the CAA. However, section 202(a)(6) of the CAA states that "the requirements of section 182(b)(3) (relating to Stage II gasoline vapor recovery) for areas classified under section 181 as moderate for ozone shall not apply after the promulgation of such [ORVR] standards." ORVR regulations were promulgated by EPA on April 6, 1994. *See* 59 FR 16262, and 40 CFR 86.001 and .098. As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and such areas may seek SIP revisions to remove such requirements from their SIP, subject to section 110(l) of the Act. EPA's policy memorandum related to ORVR, dated March 9, 1993, and June 23, 1993, provided further guidance on an allowance for removing Stage II requirements from certain areas. The policy memorandum dated March 9, 1993, states "[w]hen onboard rules are promulgated, a State may withdraw its Stage II rules for moderate areas from the SIP (or from consideration as a SIP revisions) consistent with its obligation under sections 182(b)(3) and 202(a)(6), so long as withdrawal will not interfere with any other applicable requirements of the Act." Because North Carolina included Stage II requirements as contingency measures in its maintenance plans and is now requesting to remove these requirements, this action is subject to section 110(l) of the CAA.

Section 110(l) of the Act provides that EPA cannot approve a SIP revision if that revision interferes with any applicable requirement regarding attainment, reasonable further progress

(RFP) or any requirement established in the CAA. EPA can, however, approve a SIP revision that removes or modifies control measures in the SIP once states make a “noninterference” demonstration that such a removal or modification will not interfere with attainment of the NAAQS, RFP or any other CAA requirement. As such, North Carolina must make a demonstration of noninterference in order to remove the Stage II requirements from its SIP in relation to the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas.

**b. Current Air Quality Status for the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas**

All areas in the State are currently designated as attainment for the carbon monoxide and fine particulate matter NAAQS. Effective July 20, 2013, EPA designated the Greensboro-Winston-Salem-High Point and Raleigh-Durham Areas as attainment for the 2008 8-hour ozone NAAQS. The Charlotte-Gastonia Area was designated as nonattainment for the 2008 8-hour ozone NAAQS in association with other counties in the Region, including a portion of a county in South Carolina. The designations for the 2008 8-hour ozone NAAQS were effective July 20, 2012. *See* 77 FR 30088.

**c. Non-Interference Demonstration**

On September 18, 2009, NC DENR submitted a SIP revision requesting removal of the Stage II vapor recovery requirements for new and upgraded gasoline dispensing facilities from the North Carolina SIP. North Carolina’s September 18, 2009, SIP revision includes changes to rules .0953 - *Vapor Return Piping for Stage II Vapor Recovery* and .0954 - *Stage II Vapor*

*Recovery*, which EPA approved into the North Carolina SIP as contingency measures in the 1-hour ozone maintenance plans in association with the redesignation of three North Carolina Areas: Charlotte-Gastonia Area (July 5, 1995); Greensboro-Winston Salem-High Point Area (September 9, 1993); and Raleigh-Durham Area (April 18, 1994). Specifically, NC DENR's September 18, 2009, SIP revision proposes to repeal or remove from the SIP rules .0953 and .0954, which provide Stage II vapor control requirements for new and upgraded gasoline dispensing facilities.

Additionally, the removal of rules .0953 and .0954 triggered subsequent amendments<sup>1</sup> of rules 15A NCAC 02D.0902(d) – *Applicability* (hereafter referred to as rule .0902(d)), 15A NCAC 02D.0909 - *Compliance schedules for Sources in new nonattainment Areas* (hereafter referred to as rule .0909), and 15A NCAC 02D.0952 - *Petitions for Alternative Controls for RACT* (hereafter referred to as rule .0952) in North Carolina's SIP. NC DENR's September 18, 2009, SIP revision, changes rules .0902(d), .0909, and .0952. to remove subparagraphs referencing the repealed Stage II rules .0953 and .0954.

EPA's consideration to approve North Carolina's removal of the Stage II requirements is contingent on the applicability of a section 110(l) noninterference demonstration. North Carolina never realized emission reductions in the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas as a result of the Stage II requirements that the State included as a contingency measure in the SIP. Thus removing this requirement from the contingency measures will not impact emissions of volatile organic compounds (VOC) and nitrogen oxides in the aforementioned Areas.

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<sup>1</sup> North Carolina's SIP revision also make changes to Rule 15A NCAC 02Q.0102 – Activities Exempted from permit requirements regarding New Source Performance Standards and Rule 15A NCAC 02D.1110 – National Emission Standards for Hazardous Air Pollutants. EPA is not taking action in today's action to approve these changes and these rules are not currently part of North Carolina's federally-approved SIP.



Additionally, since the time of EPA's approval of these requirements in North Carolina's SIP as contingency measures for the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas, EPA has made a determination that ORVR is in "widespread use" nationwide. Specifically, on May 16, 2012, EPA made a determination that ORVR was in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. In that rulemaking, EPA estimated that approximately 70 percent of all vehicles would be equipped with on-board systems to capture these vapors by the end of 2012, thus rendering the use of Stage II vapor recovery systems redundant because, beyond that date, the refueling emissions of the motor vehicle fleet are controlled through widespread use of ORVR.

EPA is proposing to approve North Carolina's September 18, 2009, SIP revision to remove Stage II rules .0953 and .0954 from the North Carolina SIP, and to amend rules .0902(d), .0909, and .0952, to reflect the removal of rules .0953 and .0954 in the State's implementation plan because the Agency has preliminarily determined that this revision is consistent with section 110(l) of the CAA and will not interfere with the relevant requirements in the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas.

EPA also considered this SIP revision in relation to section 110(a)(2)(D)(i)(I) of the CAA. CAA section 110(a)(2)(D)(i)(I) prohibits facilities within the State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standards. The only CAA-regulated pollutant emitted by refueling vehicles is VOC, which is a precursor of ozone, and its emissions are mitigated by the use of vehicles equipped with ORVR. As previously mentioned, EPA has previously determined that ORVR is now in

widespread use and accordingly EPA views removal of the Stage II requirements from North Carolina's SIP as not contributing significantly to nonattainment in, or interfering with maintenance by, any other State with respect to a national primary or secondary ambient air quality standard.

### **III. Proposed Action**

EPA is proposing to approve the SIP revision submitted by North Carolina for the purpose of removing Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas. Specifically, this action proposes to remove Stage II rules .0953 and .0954 from the North Carolina SIP, and to amend at rules .0902(d), .0909, and .0952 to reflect the removal of rules .0953 and .0954 in the State's implementation plan. EPA has preliminarily determined that North Carolina's September 18, 2009, SIP revision related to the State's Stage II rules is consistent with the CAA and EPA's regulations and guidance.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves State law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 28, 2013.

A. Stanley Meiburg,  
Acting Regional Administrator,  
Region 4.

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